

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 485 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

HAZAKBHAI R BAUDDIN AND ANOTHER

Appearance:

Mr. K.P.Raval, A.P.P. for the appellant

MR ADIL MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 21/08/97

ORAL JUDGEMENT

By means of filing this appeal under section 378
of the Code of Criminal Procedure, 1973, State of Gujarat
has questioned legality and propriety of judgment and
order dated May 5, 1987, rendered by the learned Chief

Judicial Magistrate, Nadiad, in Criminal Case no.38/85 acquitting the respondents of the offence punishable under section 16 of the Prevention of Food Adulteration Act, 1954.

2. Mr. Devendrapalsinh Yaduvanshi, the then Food Inspector, had visited the factory being run in the name of G.R.Spices and situated at G.I.D.C. Nadiad on October 16,1984. In the factory,turmeric and chilli were being ground. At the time when Mr. Yaduvanshi visited the factory, he was accompanied by peon Mr.V.L.Damor. The factory is owned by respondent no.2. Respondent no.1, who was present at the factory, was informed by the Food Inspector that sample of food was to be purchased for analysis. The Food Inspector had requisitioned services of Mr. Chandran Penthar Nambiyar and asked him to act as panch witness. The Food Inspector purchased 450 grams of turmeric powder from a bag bearing name of 'Ganesh Brand' for the purpose of analysis and paid price of the same to respondent no.1. Respondent no.1 issued necessary receipt to the Food Inspector for having sold the sample for analysis. The sample was divided into three equal parts and each part was placed in different clean dry bottles. The bottles were labelled, packed and sealed as required by the provisions of Prevention of Food Adulteration Rules, 1955. The Food Inspector sent sealed container of one part of the sample for analysis together with memorandum in Form VII to the public analyst. The sealed container of the remaining two parts of the sample and two copies of the memorandum in Form VII were sent in a sealed packet to Local Health Authority. A copy of memorandum and specimen impression of the seal used to seal the packet was also sent in sealed packet separately to the public analyst through peon Mr. Damor. The Public Analyst analysed the sample and sent report indicating that the sample was adulterated. Thereupon the Food Inspector applied to the Local Health Authority to obtain written consent of the Local Health Authority for lodging prosecution against the respondents. The Local Health Authority granted written consent to the Food Inspector authorising him to file complaint. The Food Inspector, therefore, instituted complaint against the respondents in the Court of learned Chief Judicial Magistrate, Nadiad. The learned Magistrate issued summons to the respondents and thereafter framed charge against the respondents at Exh.27.

The charge was read over and explained to the respondents, who pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined, (1) Devendrapalsinh G.Yaduvanshi, pw.1 exh.6,

and (2) Chandran Penthar Nambiyar, pw.2 exh.25 to prove its case against the respondents. The prosecution also produced documentary evidence such as panchnama drawn by the Food Inspector, report of the public analyst, receipt given by respondent no.1 for sale of sample of turmeric powder for analysis etc., in support of the charge levelled against the respondents. After recording of evidence of prosecution witnesses was over, learned Magistrate recorded statements of the respondents under section 313 of the Code. In their statements, the respondents denied case of prosecution, but did not lead any evidence in defence.

3. On appreciation of evidence, the learned Magistrate held that there is breach of provisions of section 10(7) of the Prevention of Food Adulteration Act, 1954. In view of this conclusion, the learned Magistrate acquitted the respondents by the impugned judgment, giving rise to the present appeal.

4. Mr. K.P. Raval, learned Counsel appearing for the State Government has taken me through the entire evidence on record. The learned Counsel for the State Government submitted that the evidence of Food Inspector is reliable which indicates that at the time of taking sample from respondent no.1, Food Inspector had called Mr. Nambiyar to be present and, therefore, the finding that the Food Inspector had not called one or more persons to be present at the time when action was taken by the Food Inspector under section 10 of the Act, deserves to be set aside. What was emphasised by the learned Counsel for the State Government was that in view of the contents of report of public analyst, the impugned judgment deserves to be reversed and the respondents should be convicted of the offences with which they were charged.

5. Mr. Adil Mehta, learned Counsel for the respondents pleaded that evidence on record does not show that Food Inspector while taking action under section 10(7) of the Act had called Mr. Nambiyar to be present and as finding of fact that the Food Inspector had committed breach of section 10(7) of the Act is based on appreciation of evidence, same should not be interfered with by the Court in the present acquittal appeal. It was pleaded that two views of the matter are possible and as the view taken by the learned Magistrate is not perverse, acquittal appeal should be dismissed.

6. Though the Food Inspector has asserted in his evidence that he had called Mr. Nambiyar to be present at the time of taking action under section 10 of the Act,

Mr.Nambiyar has stated in his deposition that he was sitting in his rickshaw at the time when the Food Inspector had gone to the factory and he had signed a prepared panchnama. What is claimed by Mr. Nambiyar in his evidence is that he was merely informed by the Food Inspector that sample was taken. It is relevant to note that though this witness has not supported the prosecution,he is not declared hostile.It means that the prosecution wants the Court to believe evidence of this witness. If evidence of this witness is accepted to be true and correct, it becomes evident that it directly contradicts evidence of the Food Inspector. The evidence of Mr. Nambiyar would indicate that at the time of taking sample or payment of price of sample to respondent no.1 or at the time of dividing the sample into three equal parts, the Food Inspector had not called Mr. Nambiyar to be present. According to the Food Inspector,when he visited the factory, he was accompanied by peon Mr. Damor, but unfortunately,Mr. Damor is also not examined as one of the prosecution wit.

case. In the light of evidence of Mr.Nambiyar,it cannot be said that any error is committed by the learned Magistrate in recording a finding that Food Inspector had failed to call an independent person to be present at the time of taking action as required by section 10(7) of the Act. In view of the unsatisfactory evidence led by the prosecution, it cannot be said that only one view is possible viz. that the respondents have committed offence punishable under section 16 of the Act. Therefore, the present acquittal appeal cannot be accepted and is liable to be rejected.

For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

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